

BEFORE THE
SURFACE TRANSPORTATION BOARD

CARGILL, INC. <i>et al.</i>)	
)	
Complainants,)	
)	
v.)	Docket No. <u>NOR-42117</u>
)	
ABERDEEN AND ROCKFISH RAILROAD COMPANY, <i>et al.</i>)	
)	
Defendants.)	<i>226522</i>

**COMPLAINANTS' REPLY TO
AAR DEFENDANTS' REPLY TO PETITION FOR MEDIATION**

On January 29, 2010, Complainants filed both a Complaint and a Petition for Mediation in the above-captioned proceeding.¹ On February 17, 2010, the Board granted an unopposed motion to extend both the due dates for filing Answers to the Complaint and Replies to the Petition for Mediation until March 18, 2010. On February 24, 2010, a group consisting of twelve out of the twenty-eight defendants, which refer to themselves as the "AAR Defendants,"² replied to the Petition for Mediation.

The AAR Defendants consent to mediation subject to the following conditions: the mediation must be non-binding, strictly private and confidential, and covered by an appropriate protective order; the complaint proceeding must be held in abeyance during the mediation

¹ Complainants filed a First Amended Complaint on February 17, 2010 for the sole purpose of adding two additional complainants to this proceeding. It is their intent that all Complainants be a party to any mediation process.

² The AAR Defendants are: Association of American Railroads; RailInc, Corp; BNSF Railway Co.; Buffalo & Pittsburgh Railroad, Inc; Canadian National Railway Co.; Canadian Pacific Railway Co.; CSX Transportation, Inc.; Gary Railway Co.; Norfolk Southern Railway Co.; Rochester & Southern Railroad, Inc.; The Kansas City Southern Railway Co.; and Union Pacific Railroad Co.

period; and persons with authority to bind parties should be present at any mediation session at which the mediator requests their presence.

Complainants agree to those conditions with one clarification. In footnote 4 of their Reply, the AAR Defendants suggests that the Board should hold in abeyance even the filing of Answers by the Defendants on March 18, 2010. As a practical matter, however, that may not be possible. In its February 17th decision, the Board deferred both the due dates for the Answers and Replies to the Petition for Mediation until March 18, 2010. Although the AAR Defendants have filed their reply to the Petition for Mediation, there remain sixteen other defendants which have not done so, and may not do so until March 18th. Because the Board may not be able to issue a decision on mediation until after both the Answers and Replies to the Petition for Mediation are due, the question of holding the filing of Answers in abeyance would be moot.

Complainants also believe that filing of the Answers prior to the mediation is important for two reasons.

First, Complainants believe that the Defendants' Answers will facilitate the mediation process. As the situation currently stands, the Complainants have made multiple assertions of fact and law in their Complaint to which the Defendants have not responded. Until the Answers are filed, the issues have neither been engaged nor defined. The Defendants' Answers will help to define the scope of the dispute and thereby enhance the effectiveness of the mediation.

Complainants do not object to holding the proceeding in abeyance after the filing of Answers.³

Second, until the Answers are filed, the Complainants do not know who is representing each Defendant in this proceeding. According to the Board's rules, service of a Complaint is to be made by sending copies to "the chief legal officer of each defendant by either [1] confirmed

³ In rate cases, where mediation is mandated, a defendant's Answer is filed and available to the Complainant during the mediation process. See 49 C.F.R. 1109.4, 1111.8 and 1111.9.

facsimile and first-class mail or [2] express overnight courier.” [underline added] Until an official appearance is made by each Defendant’s representative, which typically occurs when the Answer is filed, it is uncertain whether any other form of service of any official communication is permitted.⁴ This complicates even the most routine correspondence in this case. It also is less than ideal due to the fact that, in many instances involving Class II and III railroads, the identity of a chief legal officer is unknown, which results in service being addressed generically to the title of “chief legal officer,” rather than to an individual.

For the foregoing reasons, Complainants express their consent to the conditions for mediation established by the AAR Defendants, but with the clarification that the procedural schedule in this case precludes holding this proceeding in abeyance until after the due date for filing Answers on March 18, 2010.

Respectfully submitted,



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⁴ This concern may be ameliorated as to the twelve AAR Defendants, on whose behalf Covington & Burling has filed the Reply to the Petition for Mediation. However, even in that filing, the scope of Covington’s representation of each individual AAR Defendant is unclear. In any event, there are sixteen other defendants that have not yet entered any appearance in this case.

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Petition for Mediation to be served by first class mail postage prepaid this / st day of March 2010, on:

<p>Garland Horton President Aberdeen and Rockfish Railroad Co. P.O. Box 917, Aberdeen, NC 28315</p>	<p>R.B. Culliford Senior Vice President and General Counsel Boston and Maine Corporation Maine Central Railroad Co. Pan Am Railways Portland Terminal Co. Springfield Terminal Railway Co. 1700 Iron Horse Park No. Billerica, MA 01862-1692</p>
<p>David Collins Suite 200, 1200-C Scottsville Road Rochester, NY 14624 <i>For Buffalo and Pittsburg Railroad Inc. Rochester and Southern Railroad, Inc.</i></p>	<p>Allison M. Fergus General Counsel and Secretary Buffalo and Pittsburgh Railroad Inc. c/o Genesee & Wyoming Inc. 66 Field Point Road Greenwich, CT 06830</p>
<p>Sean Finn Executive Vice President Corporate Services, and Chief Legal Officer Canadian National Railway 935 de La Gauchetiere St. West, Montreal, QC H3B 2M9</p>	<p>Joe McGovern Chief Operating Officer Cedar Rapids and Iowa City Railway Company 2330 12th Street SW Cedar Rapids, IA 52404</p>
<p>Kevin Burke Vice President and General Manager Cedar Rapids and Iowa City Railway Company 2330 12th Street SW Cedar Rapids, IA 52404 (319) 786-3686 (phone) (319) 786-3671 (fax)</p>	<p>Nicholas B. Temple President Central Washington Railroad Company 111 University Parkway, Ste 200 Yakema, WA 98901 (509) 453-9166 (phone) (509) 452-9346 (fax)</p>
<p>Elgin, Joliet and Eastern Railway Company c/o Sean Finn Executive Vice President Corporate Services, and Chief Legal Officer Canadian National Railway 935 de La Gauchetiere St. West, Montreal, QC H3B 2M9</p>	<p>Gary Railway Company c/o Thomas Kelly President Transtar Inc. 1200 Pennsylvania Avenue Suite 300 Pittsburgh, PA 15222</p>
<p>James H. Danzl General Manager Marketing Gary Railway Company One North Buchanan Street Gary, Indiana 46402</p>	<p>Indiana & Ohio Railway Company c/o Scott Williams, Senior Vice President and General Counsel Rail America Inc. 7411 Fullerton St. Suite 300 Jacksonville, FL 32256</p>

<p>Ryan Ratledge General Manager Indiana Ohio & Railway Company 2856 Cypress Way Cincinnati, OH 45212</p>	<p>Iowa, Chicago & Eastern Railroad Corporation c/o Vern G. Graham President Dakota, Minnesota, and Eastern Railroad Corporation 140 N. Phillips Ave. Sioux Falls, SD 57104</p>
<p>Daniel R. Sabin President Iowa Northern Railway 122 North 2nd Street P.O. Box 640 Greene, IA 50636</p>	<p>William Wochner Senior Vice President and Chief Legal Officer Kansas City Southern Railway Company 427 West 12th Street, Kansas City MO 64121-9335</p>
<p>Thomas Walsh President Montana Rail Link, Inc. PO Box 16390 101 International Way Missoula, Montana 59808-6390</p>	<p>Nathan Fenno President New York, Susquehanna and Western Railway Corp. One Railroad Avenue Cooperstown, NY 13326</p>
<p>Hugh M. Tarbutton President Sandersville Railroad Company P.O. Box 269 Sandersville, GA 31082</p>	<p>Louis P. Warchot Senior Vice President Law & General Counsel Association of American Railroads 50 F Street, N.W. Washington, D.C. 20001</p>
<p>E. Allen West President and Chief Executive Officer Railinc Highwoods Centre at Weston 7001 Weston Parkway, Suite 200 Cary, NC 27513</p>	<p>Roger Nober Executive Vice President Law & Secretary BNSF Railway Company 2650 Lou Menk Drive P.O. Box 961057 Fort Worth, TX 76161-0057</p>
<p>Cindy Sanborn President Baltimore and Ohio Chicago Terminal Railroad Company c/o CSX Transportation Inc. 500 Water Street Jacksonville, FL 32202</p>	<p>Paul Guthrie Vice President Law Canadian Pacific Railway Suite 500 Gulf Canada Square 401 9th Avenue SW Calgary, AB T2P 4Z4</p>
<p>James H. Gallegos Vice President and General Counsel BNSF Railway Company 2650 Lou Menk Drive, P.O. Box 961057 Fort Worth, TX 76161-0057</p>	<p>James A Hixon Executive Vice President- Law and Corporate Relations Norfolk Southern Railway Company Three Commercial Place Norfolk, VA 23510-2191</p>
<p>E.M. Fitzsimmons, Sr. Vice President Law, General Counsel & Corporate Secretary CSX Transportation Inc. 500 Water Street Jacksonville, FL 32202 <i>For CSX Transportation Inc. and Baltimore and Ohio Chicago Terminal Railroad Company</i></p>	<p>Mike Hemmer Senior Vice President- Law and General Counsel Union Pacific Railroad Company Stop 1580 1400 Douglas Street Omaha, NE 68179</p>



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